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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

DEPUTY

NO. 50014-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

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STATE OF WASHINGTON,

Appellant,

v.

JESSE CARL FRAME,

Respondent.

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APPEAL FROM THE SUPERIOR COURT FOR CLARK COUNTY

CAUSE NO. 99-8-00904-1

THE HONORABLE ROBERT LEWIS

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**BRIEF OF RESPONDENT**

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DM 8/24/17

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**A. ISSUES**

1. Is the Clark County Superior Court Juvenile Division a court of record?
2. Can a juvenile offender utilize the Juvenile Division of the Superior Court to address issues in his Disposition Order after he turns 21 years of age?
3. The Petition to Restore Firearm Rights must be made to a court of record.

**B. STATEMENT OF THE CASE**

Respondent accepts the State's Statement of the Case, except after reviewing the Disposition Order executed at the time Respondent was given the SSODA Disposition there was no Order entered prohibiting Respondent from possessing a firearm.

**C. ARGUMENT**

**I. ISSUE ONE:**

**THE CLARK COUNTY SUPERIOR COURT JUVENILE DIVISION IS A COURT OF RECORD.**

The State claimed one issue, but listed three sub-issues as a, b, and c. Respondent will track a, b and c as separate issues I, II and III respectively in Respondent's argument.

The State's first argument is the court had no jurisdiction to hear Respondent's Motion because the Juvenile Court is not a "court of record" as defined in Article IV, Section 11 of the Washington Constitution.

Respondent assumes the reasoning behind the argument addresses the language in RCW 9.41.040(4)(b)(i). "An individual may petition a court of record to have his or her right to possess a firearm restored under (a) of this subsection (4) only at the court of record that ordered the petitioner's prohibition on possession of a firearm." If the juvenile division of the Superior Court is not a court of record then the quoted language above would prohibit Respondent from filing his petition in the juvenile division of the Superior Court.

RCW 13.04.021(1) states: "The juvenile court shall be a division of the Superior Court."

RCW 13.04.030(1) also states:

"Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings: ...(e) relating to juveniles alleged or found to have committed offenses, traffic, or civil infractions, or violations as provided in RCW 13.40.020 through RCW 13.40.230."

Article IV §11 of the Washington State Constitution establishes, "the Supreme Court and the Superior Courts shall be courts of record,

and the legislature shall have power to provide that any of the courts of this state, excepting justices of the peace, shall be courts of record.”

The case law has held that the juvenile division is not a separate court from Superior Court, but in fact are the same. State v. Golden, 112 Wash. App. 68, 47 P.3d 587 (2002) says it best in the following excerpt:

It is well settled that the juvenile court is simply a division of the Superior Court, not a separate constitutional court. Werner, 129 Wash. 2d 485, @ 492, 918 P.2d 916 (1996). The designation of a particular Superior Court department as the ‘juvenile department’ does not diminish the jurisdiction of other Superior Court departments to proceed in juvenile court matters. State ex rel. Campbell v. Superior Court, 34 Wash. 2d 771, 775, 210 P.2d 123 (1949). The legislative creation of the juvenile court by statute was not intended to vest jurisdiction in a court other than the Superior Court. The juvenile court is still a part of Superior Court. Werner, 129 Wash. 2d 485, @492, 918 P.2d 916 (1996); Dillenburg v. Maxwell, 70 Wash.2d 331, 341, 413 P.2d 940 (1966) (juvenile is “really the Superior Court or a department thereof”) (quoting State v. Ring, 54 Wash. 2d 250, 253, 339 P.2d 461 (1959)). Golden, 112 Wash.App. 68, @ 73-74, 47 P.3d 587 (2002).

If juvenile court is a division of Superior Court, it is a Superior Court and as a Superior Court, is a court of record.

## **II. ISSUE TWO**

**CAN A JUVENILE OFFENDER UTILIZE THE JUVENILE DIVISION OF THE SUPERIOR COURT TO ADDRESS ISSUES IN HIS DISPOSITION ORDER AFTER HE TURNS 21 YEARS OF AGE?**

The State claims the Court did not have authority to hear the Motion to Restore Firearm Rights because Respondent was over the age of 21 years at the time the motion was filed.

The question is, can a juvenile offender utilize the juvenile division of the Superior Court to address issues in his disposition order after he turns 21 years of age.

The State relies on RCW 13.40.300. RCW 13.40.300 states as follows:

- (1) In no case may a juvenile offender be committed by the juvenile court to the department of social and health services for placement in a juvenile correctional institution beyond the juvenile offender's twenty-first birthday. A juvenile may be under the jurisdiction of the juvenile court or the authority of the department of social and health services beyond the juvenile's eighteenth birthday only if prior to the juvenile's eighteenth birthday:
  - (a) Proceedings are pending seeking the adjudication of a juvenile offense and the court by written order setting forth its reasons extends jurisdiction of juvenile court over the juvenile beyond his or her eighteenth birthday;
  - (b) The juvenile has been found guilty after a fact finding or after a plea of guilty and an automatic extension is necessary to allow for the imposition of disposition;
  - (c) Disposition has been held and an automatic extension is necessary to allow for the execution and enforcement of the court's order of disposition. If an order of disposition imposes commitment to the department, then jurisdiction is automatically extended to include a period of up to twelve months of parole, in no case extending beyond the offender's twenty-first birthday; or



(d) While proceedings are pending in a case in which jurisdiction has been transferred to the adult court pursuant to RCW 13.04.030, the juvenile turns eighteen years of age and is subsequently found not guilty of the charge for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense, and an automatic extension is necessary to impose the disposition as required by RCW 13.04.030(1)(e)(v)(E).

(2) If the juvenile court previously has extended jurisdiction beyond the juvenile offender's eighteenth birthday and that period of extension has not expired, the court may further extend jurisdiction by written order setting forth its reasons.

(3) In no event may the juvenile court have authority to extend jurisdiction over any juvenile offender beyond the juvenile offender's twenty-first birthday except for the purpose of enforcing an order of restitution or penalty assessment.

(4) Notwithstanding any extension of jurisdiction over a person pursuant to this section, the juvenile court has no jurisdiction over any offenses alleged to have been committed by a person eighteen years of age or older.

RCW 13.40.300 only limits the court's authority to adjudicate a youth, enter a disposition order after the youth has been adjudicated, monitor the youth's performance on community supervision for a disposition order entered before he turns 21 years of age or confine a youth at a juvenile facility.

The State relies on RCW 13.40.300 for the proposition that "in no event may the juvenile court have authority to extend jurisdiction over any juvenile offender's twenty-first birthday, except for the purpose of enforcing an order of restitution or penalty assessment."

The Respondent submits there is no loss of juvenile jurisdiction if the youth is attempting to address provisions in the disposition order such as his or her effort to restore firearm rights, collaterally attack his/her adjudication, modify a mistaken disposition order issued by the juvenile court, or be relieved of his/her duty to register as a sex offender.

State v. Posey, 174 Wash. 2d 131, 272 P.3d 840 (2012) (Posey II) was relied on by the State to substantiate their argument, however, the issue in Posey II was the sentencing of Posey after he turned 21, as opposed to seeking redress from a disposition order imposed by the juvenile court when the youth was under the age of 21 years. It is interesting to note the trial court in Posey II sentenced the youth to the juvenile standard range disposition of 60 to 80 weeks. State v. Posey, 174 Wash. 2d 131, @135, 272 P.3d 840 (2012).

State v. Golden, 112 Wash. App. 68, 47 P.3d 587 (2002) is also distinguishable as it was not an effort to enforce a disposition order entered into by the juvenile court when the youth was under 18 years of age, it was a collateral attack on the juvenile adjudication after the youth turned 18 years of age.

Two issues are important in that decision. The first is the Motion to Set Aside the Juvenile Adjudication was under the original cause

number. In reviewing the decision, there is no indication the court changed the cause number when it decided to hear the motion as a Superior Court rather than the juvenile division of the Superior Court. If the original cause number was retained, the use of the juvenile cause number was not a factor in the Court's authority to rule on the Motion to Set Aside the Guilty Plea. The Superior Court made the decision based upon the proceeding that took place, the limitation of juvenile jurisdiction based upon age was not a factor in the decision of the court.

A juvenile court has jurisdiction over a particular proceeding based on the date of that proceeding, not the date of the original charge or the date of the plea. In Golden, supra, the youth was charged, convicted and sentenced before he was 18, so juvenile court had jurisdiction. The motion to withdraw his guilty plea was after he turned 18, but did not deal with the limitation of RCW 13.40.300, so the court had jurisdiction to rule on the Motion to Withdraw his Guilty Plea.

In the Golden, supra, decision, footnote 2 states "the parties do not explain why the juvenile court's assertion of extended primacy jurisdiction is ineffective. It is immaterial, however, under this analysis."

Respondent submits the immateriality of the footnote was based upon the fact that even under the juvenile cause number, the Superior

Court, as opposed to the “juvenile division of the Superior Court”, could rule on the motion at any age.

If that is the case, there is no reason why the court in the current case could not do the same since they are the same court.

### **III. ISSUE THREE**

#### **THE PETITION TO RESTORE FIREARM RIGHTS MUST BE MADE TO A COURT OF RECORD.**

The third issue raised by the State is RCW 9.41.040(4) requires the petition to restore firearm rights must be made to a court of record.

Respondent refers to Respondent’s argument in Issue One as to whether or not the Juvenile Division of the Superior Court is a court of record.

Respondent submits the State’s argument is not consistent with the language of RCW 9.41.040(4) and therefore is wrong.

A Motion to Restore Firearm Rights is a process a person can pursue to seek the rights to possess firearms after those rights were lost due to a felony conviction or a conviction for certain enumerated non felony crimes. RCW 9.41 ... allows a person to seek the restoration of firearm rights only at “the court of record that ordered the prohibition on possession of a firearm.”

Several practical examples support such a procedure.

1) The complete process from adjudication to forfeiture of the right to bear arms, to the restoration of the right to bear arms would fall under one cause number eliminating the risk of confusion between different cause numbers with the agencies that are notified after firearm rights are restored, such as the state police. This creates consistency.

2) It eliminates inequality on how the statute is applied to different aged youth. A youth convicted of a crime when they are 10 to 15 years of age would be able to seek their right to restore their firearm rights under the same cause number because they would still be under the age of 21 years when they became eligible, however youths 16 years of age and older would not be eligible to file under the juvenile cause number because they would be 21 years of age or older when the 5 year waiting period would end.

3) It would avoid the argument that the court loses jurisdiction of a youth who files a petition in juvenile court to restore firearm rights before they turn 21 years of age, but the matter is not heard until after the youth turns 21 years of age.

The plain language of RCW 9.41.040(4)(b)(i) and (ii) gives direction as to where the petition should be applied to for reinstatement of the

persons firearm rights. The language of RCW 9.41.040(4) gives two alternatives.

“...(b) An individual may petition a court of record to have his or her right to possess a firearm restored under (a) of this subsection (4) only at:

(i) The court of record that ordered the petitioner’s prohibition on possession of a firearm; or

(ii) The Superior Court in the county in which the petitioner resides.”

This language makes it clear there are two choices, the first being the court that took away the person’s right to bear arms. The second would be based upon two possibilities. The possibility is the court that issued the order prohibiting the right to bear arms was not a court of record, such as a District Court or Municipal Court, in which case the Superior Court of the persons’ residence would be used. The second possibility is the court that issued the order prohibiting the right to bear arms was a court of record but the petitioner lives in another county, so the petitioner can seek restoration of firearm rights in the county where the petitioner resides.


C. CONCLUSION

The Juvenile Division of the Superior Court is a court of record, and has authority to modify or correct disposition orders of juvenile

offenders even after they turn 21 years of age and RCW 9.41.040  
authorizes the court of record that prohibited the youth from possessing  
firearms to reinstate that right.

Dated this 24<sup>r</sup> day of August, 2017.

Respectively Submitted:



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Michael G. Borge, WSB#15058  
Attorney for Respondent

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DIVISION II

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STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

COURT OF APPEALS, DIVISION II OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, ) NO. 50014-1-II  
Appellant, )  
vs. ) DECLARATION OF MAILING  
)  
JESSE CARL FRAME, )  
Respondent, )  
DOB: 07/09/1983 )

I, Michael G. Borge, declare that on the 24<sup>th</sup> of August, 2017, I mailed a true and correct copy of the foregoing documents: Brief of Respondent on August 24<sup>th</sup>, 2017 where there is regular service of mail.

Julie Carmena  
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Jesse Carl Frame  
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Battle Ground, WA 98604

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED this 24<sup>th</sup> day of August, 2017.



Michael G. Borge, WSB#15058  
Attorney for Respondent  
Vancouver, WA

City & State Signed: